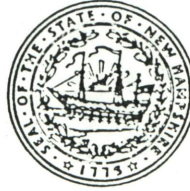


83-13-I

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April 26, 1983

Mr. Dennis R. Lunderville
Director
Air Resources Agency
Health and Welfare Building
Hazen Drive
Concord, NH 03301

Re: Permitting Portable Devices

Dear Mr. Lunderville:

By memorandum dated February 1, 1983, you requested our advice on the question of whether the Air Resources Agency is authorized to issue a single temporary permit or final permit (permit to operate) for one device at different locations within the State. Your question relates particularly to permits for an asphalt drum mix plant, which can be readily moved and installed from one construction site to another. Over the course of our several discussions on this matter we agreed that your precise inquiry is whether multiple permits, each for a different location, may be issued for a single device. In light of Eve Oyer's September 28, 1982 letter to you and the applicable statutes and rules, it is our view that final permits may only be issued for devices located at one site, but that the Agency may issue separate temporary permits for a single device, each such permit for a different location.

RSA 125-C:11(I) (Supp. 1981) prohibits the construction, installation, or operation of devices contributing to air pollution unless the devices have been permitted by the Air Resources Agency.



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Temporary permits are issued prior to the construction or installation of a device, and final permits (defined as permits to operate in Rule Air 602.02(b)) are issued when the device becomes operational. RSA 125-C:11(II, III) (Supp. 1981).

As Eve Oyer indicated in her letter of September 28, 1982, under the current rules of the Air Resources Commission, final permits may only be issued where a device has been installed and is operational. Until the device is in place and operational it is not subject to the permitting requirements of RSA 125-C:11, III, and the Agency has no authority to issue a final permit. From this it is clear that the Agency may not issue final permits for a single device for multiple locations.

Nothing in RSA ch. 125-C and the rules promulgated thereunder, however, prohibits the Agency from issuing temporary permits for one device at various locations. By the very terms of the temporary permit requirement, such permits are required prior to the construction or installation of a device. RSA 125-C:11 (II); Air 602.01(a). The rules restrict a company from obtaining a temporary permit for a device to be installed in the future only by requiring that installation of the device must commence within eighteen months of the issuance of the temporary permit. Air 602.01(b). It is our interpretation of RSA 125-C:11 and your rules, therefore, that you may issue temporary permits for a single device for multiple locations.

Please note that separate temporary permits will be necessary for each site. Air 605.01(a) requires an application for a temporary permit for each device, and we infer from this requirement that each separate location for a particular device also requires an application and permit. Without this requirement the Agency could not determine whether the operation of the device will comply with the State Implementation Plan and comport with the air quality standards in a particular area, which determination is required by RSA 125-C:11 (II) and Part Air 606 and Part Air 605.

The above conclusions are based on rules currently in force. If the particular circumstances which prompted your question are not adequately dealt with by the present rules, you may consider recommending to the Air Resources Commission that it amend these rules. The Agency also has the flexibility to impose appropriate permit conditions to provide for potential problems raised by issuing multiple temporary permits for one device. RSA 125-C:11 (II, III). Through permit conditions the Agency may ensure that the process for applying for multiple permits is not abused and that air quality standards are properly maintained.

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Please let me know if you have any further questions on this matter.

Yours truly,

A handwritten signature in dark ink, appearing to read "G. Dana Bisbee", written in a cursive style.

George Dana Bisbee
Attorney

Environmental Protection Division

GDB/lw

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